

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rickie Lee Luckenbill and

Susan Elaine Farnsworth-Luckenbill, h/w

(b) County of Residence of First Listed Plaintiff Berks County, PA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patrick Hughes, Esq. / Kenneth T. Levine, Esq. - de Luca Levine LLC

Three Valley Square, Suite 220, Blue Bell, PA 19422

(215) 383-0081

DEFENDANTS

MTD Consumer Group Inc.

County of Residence of First Listed Defendant Medina County, OH

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause:

Subrogation action by carrier for damages caused by a defect in a lawn tractor mower.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/03/2020

SIGNATURE OF ATTORNEY OF RECORD

Patrick A. Hughes

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 151 Camp Strauss Road, Bethel, PA 19507

Address of Defendant: 5965 Grafton Road, Valley City, OH 44280

Place of Accident, Incident or Transaction: 151 Camp Strauss Road, Bethel, PA 19507

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|---|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ **is not** related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 01/03/2020

Patrick A. Hughes

Attorney-at-Law / Pro Se Plaintiff

91415

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FEELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☒ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Patrick A. Hughes, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 01/03/2020

Patrick A. Hughes

Attorney-at-Law / Pro Se Plaintiff

91415

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Rickie Lee Luckenbill and		
Susan Elaine Farnsworth-Luckenbill, h/w	:	CIVIL ACTION
v.	:	
MTD Consumer Group, Inc.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

January 3, 2020	Patrick A. Hughes	Plaintiff
<hr/>	<hr/>	<hr/>
Date	Attorney-at-law	Attorney for
215-383-00227	215-383-0082	Phughes@delucalevine.com
<hr/>	<hr/>	<hr/>
Telephone	FAX Number	E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**RICKIE LEE LUCKENBILL and
SUSAN ELAINE FARNSWORTH-
LUCKENBILL, h/w,
Plaintiffs**

Civil Action No.

v.

JURY TRIAL DEMANDED

**MTD CONSUMER GROUP INC.
Defendant**

COMPLAINT

Plaintiffs, Rickie Lee Luckenbill and Susan Elaine Farnsworth-Luckenbill, h/w, by and through their undersigned counsel, brings this Complaint against Defendant, MTD Consumer Group Inc., and, in support thereof, avers as follows:

PARTIES

1. Rickie Lee Luckenbill and Susan Elaine Farnsworth-Luckenbill, h/w (hereinafter “the Luckenbills” or “Plaintiffs”) were and are, at all times relevant hereto, adult individuals/citizens who were the owners and occupants of the residential property located at 151 Camp Strauss Road in Bethel, Berks County, Pennsylvania (hereinafter “the subject property”).

2. At all times relevant hereto, Defendant, MTD Consumer Group Inc. (hereinafter “MTD” or “Defendant”) was and is, upon information and belief, an Ohio corporation with a principal place of business located at 5965 Grafton Road, Valley City, Ohio 44280, and was authorized to do business within the Commonwealth of Pennsylvania.

3. Upon information and belief, and at all times relevant hereto, MTD was/is in the business of, *inter alia*, designing, manufacturing, testing, marketing, selling, and/or distributing various models of lawn tractors, such as the Cub Cadet LTX 1042 lawn tractor that is at issue in this case.

JURISDICTION AND VENUE

4. Jurisdiction is based on 28 U.S.C §1332(a)(1) as this action involves a controversy between citizens of different states. Plaintiffs are citizens of the Commonwealth of Pennsylvania and Defendant is a company incorporated in the State of Ohio. Moreover, the amount in controversy, approximately \$500,000.00, which exceeds the jurisdictional threshold of this Court (exclusive of interest and costs).

5. Venue is proper in this district based on 28 U.S.C §1391(a) because the events giving rise to this claim occurred within this district, specifically in Berks County, Pennsylvania.

FACTUAL BACKGROUND

6. Plaintiffs incorporate by reference the preceding paragraphs as though set forth at length herein.

7. On or before April 13, 2018, the Luckenbills bought or otherwise came into the possession of a Cub Cadet LTX1042 lawn tractor mower (hereinafter “the subject lawn tractor product”).

8. On or about April 13, 2018, shortly after using the subject lawn tractor product, it became engulfed in fire, from which the Luckenbills sustained damage to their real and personal property, as well as the imposition of additional expenses and hardship

besides (including loss of use of the subject property, and the interference with the enjoyment of such property).

9. Investigation has revealed that a malfunction that emanated from the subject lawn tractor product on the above date and at the subject property was the cause of the fire that resulted in the damages that the Luckenbills suffered.

10. The aforementioned damages set forth above were directly and proximately caused by Defendant as is more fully described below.

COUNT I – NEGLIGENCE

11. Plaintiffs incorporate by reference the preceding averments as though set forth at length herein.

12. MTD owed a duty of reasonable care to Plaintiffs with regard to the manufacture, assembly, design, inspection, testing, marketing and distribution, *inter alia*, of its lawnmower products.

13. The damages suffered by Plaintiffs as described above were the direct and proximate result of negligence, carelessness, and/or other liability producing conduct of MTD, by and through its employees, agents, technicians, suppliers and/or servants, more specifically described as follows:

- a. failing to exercise reasonable care in the following manner:
 - i. failing to manufacture, assemble, design, inspect, test, distribute and/or market a properly functioning lawn tractor product;
 - ii. failing to properly inspect, assemble, manufacture, distribute and/or test the subject lawn tractor product;
 - iii. failing to properly determine that the subject lawn tractor product was not in compliance with applicable standards; and/or

- iv. failing to recall the subject lawn tractor product, for which it was aware that product of similar design and manufacture have experienced similar failures and losses.

14. As a direct and proximate result of MTD's above-described negligence, carelessness, and/or other liability producing conduct, Plaintiffs sustained and incurred damages in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiffs respectfully request judgment against MTD for damages in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT II – STRICT LIABILITY

15. Plaintiffs incorporate by reference the preceding averments as though set forth at length herein.

16. MTD is engaged, and at all times relevant hereto was engaged, in the business of designing, assembling, manufacturing, distributing, *inter alia*, lawn tractors, and, specifically the subject lawn tractor product at issue in this case.

17. MTD designed, assembled, manufactured and/or distributed the subject lawn tractor product in a defective condition, unreasonably dangerous to Plaintiffs and their property.

18. MTD knew or should have known that the subject lawn tractor product would, and did, reach the Plaintiffs without substantial change in the condition in which originally selected and sold.

19. The aforementioned defects consisted of:

- a. design defects;
- b. manufacturing defects;
- c. component defects;
- d. use-instructions and/or warnings defects; and/or
- e. a failure to warn of the design, assembly, manufacturing, and/or component defects, and/or properly provided warning and/or safe use instructions.

20. For these reasons, MTD is strictly liable to Plaintiffs under Section 402A of the Restatement (Second) of Torts, and/or the applicable case law of the Commonwealth of Pennsylvania.

21. As a result of the damages directly and proximately caused by the unreasonably dangerous defects in MTD's product, Plaintiffs sustained and incurred damages as described herein in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiffs respectfully request judgment against MTD for damages in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT III – BREACH OF WARRANTIES

22. Plaintiffs incorporate by reference the preceding paragraphs as though set forth at length herein.

23. At the time of selling the subject lawn tractor product, Defendant had reason to know of the particular purpose for which it would be used, and knew that its skill and judgment was being relied upon to furnish a suitable product.

24. Thus, given the foregoing, Defendant breached implied warranties of fitness for a particular purpose as set out in the Uniform Commercial Code (hereinafter “UCC”) and in 13 Pa. C.S.A. § 2-315 in that the subject lawn tractor product was not fit for the particular use for which intended.

25. In addition, Defendant breached implied warranties of merchantability as set out in the UCC and 13 Pa. C.S.A. § 2-314 (c) in that the subject lawn tractor product was not fit for the use for which intended.

26. Defendant also breached any and all express warranties made or relating to the subject lawn tractor product that became part of the basis of the bargain for sale of the product in violation of the UCC and 13 Pa. C.S.A. § 2-313.

27. Furthermore, Defendant breached the express and implied terms set out in the warranties enjoyed by Plaintiffs at the time of coming to own the subject lawn tractor product, and/or any time subsequent thereto.

28. Plaintiffs’ damages, as described above, occurred as a direct and proximate result of the Defendant’s breaches of its implied warranties of fitness for a particular purpose and merchantability as set out in 13 Pa. C.S.A. § 2-315 and § 2-314 (c), and as a result of its breaches of expressed warranties in violation of 13 Pa. C.S.A. § 2-313, as well as the express and implied warranties set out in the warranties Plaintiffs enjoyed upon coming to own the subject lawn tractor product, and/or any time subsequent thereto.

WHEREFORE, Plaintiffs respectfully request judgment against MTD for damages in an amount in excess of \$75,000.00, plus costs incident to this suit, delay

damages and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

Respectfully submitted,

de LUCA LEVINE LLC

Dated: January 3, 2020

BY:



PATRICK HUGHES (PA ID No. 91415)

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KENNETH T. LEVINE (PA ID No. 60984)

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